IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 19073 of 2006(U)

PETITIONER:

P.V.THAMPAN, HEAD CLERK,
DISTRICT RURAL DEVELOPMENT AGENCY (DRDA),
KASARGOD.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

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1. COMMISSIONER FOR RURAL DEVELOPMENT,
THIRUVANANTHAPURAM.

2. THE PROJECT OFFICER,
DRDA, KASARAGOD.

ADDL. R3:
GOVT. OF KERALA, REP. BY ITS CHIEF SECRETARY
SECRETARIAT, THIRUVANANTHAPURAM
IMPLEADED AS AS ADDL. R3 AS PER ORDER DT.24.8.2006 IN I.A.11782/2006
DT. 24.8.2006)

BY GOVT. PLEADER SHRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C)No. 19073 OF 2006 U
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Dated this the 21st December, 2006

J U D G M E N T

The challenge is to Ext. P1 order of the 1st respondent placing the petitioner under suspension from the post of Head Clerk, District Rural Development Agency (DRDA), Kasaragod. Ext. P1 was passed pursuant to Government letter dated 8-6-2006 which is referred to therein. It is stated that the petitioner was found responsible for the irregularities pointed out by the Finance Inspection Wing. The order of suspension came into effect immediately.

2. Respondent No. 1 is the Commissioner for Rural Development, Thiruvananthapuram. Respondent No. 2 is the Project Officer, DRDA, Kasaragod. During the pendency of the writ petition, Government of Kerala represented by the Chief Secretary was impleaded as additional 3rd respondent.

3. It is contended that the impugned order was passed without application of mind, that it is a colourable exercise of power and that it is vitiated by

extraneous considerations and malafide exercise of power besides being discriminatory and arbitrary. The respondent entered appearance pursuant to notice ordered on 24-8-2006.

4. Having regard to the contention seriously urged by the petitioner that the impugned order is discriminatory and the department is shielding the Project Officer despite the report of the Financial Inspection Wing, this Court, on 1-8-2006, passed the following interim order:

> "Counsel for the petitioner submits that statutory remedy will be invoked and time may be granted to produce copy of the representation or appeal as the case may be. Govt. Pleader is directed to ascertain in the meantime what action has been taken against the Project Officer against whom findings have been entered in the inspection report regarding the very serious lapses and misconduct.
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> Post on 7-8-2006."

5. The 1st respondent was not able to furnish the above information despite repeated adjournments granted by this Court. In the meantime, the petitioner produced Ext. P2 representation filed before the 2nd respondent requesting to revoke Ext. P1 and to

reinstate him in service.

6. Since neither the information sought for on 1-8-2006 nor counter affidavit in answer to the averments and allegations contained in the writ petition was filed by the respondents, this Court directed the 1st respondent on 11-12-2006 to make available the files leading to Ext. P1 and subsequent proceedings, if any, taken in the matter.

7. When the writ petition came up for consideration on 18-12-2006, the Govt. Pleader made available the relevant files for the perusal of this Court.

8. I have heard the learned counsel for the petitioner and the learned Govt. Pleader for respondents 1 to 3.

9. A perusal of the file leading to Ext. P1 and the subsequent action taken reveals that action has been taken against the petitioner only, though the report on inspection conducted in the DRDA, Kasaragod by the Finance Inspection Wing, based on the irregularities noticed, the Project Officer (respondent No. 2) and the Head Clerk (petitioner) may be suspended with immediate

effect pending detailed enquiry. The irregularities that came to the notice of the inspection team consist of obtaining quotations from M/s. Smitha Printers, M/s. Varnam Graphics and M/s. Varnamudra Printers which are alleged to be not in existence. A sum of Rs.63,200/- was sanctioned towards printing charges payable to M/s. Varnamudra Printers. The amount was paid to the firm by cheque dated 26-12-2005. The Inspection Wing observed that Stores Purchase Rules were not observed, Stock Register was not maintained, competitive tenders were not invited giving wide publicity, etc. Since a sum of Rs.58,500/- was seen spent towards printing charges and the amount paid to M/s. Smitha Printers by cheque dated 29-12-2005, the Inspection Wing made efforts to locate the printing press in the address shown, but no such institution could be found out. As regards payment of Rs.92,000/- to M/s. Varnamudra Printers and debiting the expenditure to DRDA account, the Inspection Wing found on verification that no entries were made in the relevant registers and that the Project Officer could not produce even a single

copy of the loan register. As regards cheque for Rs.97,000/- issued towards printing charges for SGSY membership register, the Inspection Wing observed that the printing work was carried out by M/s. Varnam Graphics which is a non-existing firm in Kasaragod and that the Project Officer had no answer about the non-availability of the bills except stating that the bills were in the custody of the Head Clerk. Irregularities were found in the matter of payment of Rs.1,63,000/- by two cheques dated 8-2-2006. Irregularities were noticed in the maintenance of cheque book, store register, etc. In the above circumstances, the Inspection Wing opined that the quotations and bills in the name of non-existing firms were bogus and fabricated. The Inspection Wing noticed that before printing orders were given the Project Officer did not care to sign any agreement with the firm which quoted the lowest rate. Though the DRDA purchased a new car in the place of the old car, no action was taken to sell away the old car in public auction, despite the Accountant General (Audit) Kerala in its report for the

year 2004-2005 had directed to take early action to dispose of the car. The road rollers were found idle causing pecuniary loss to the department. On verification of the telephone charges incurred on the official/residential telephone of the Project Officer for the year 2005 it was found that he had made calls in excess of the limit. It was also alleged by the inspection party that almost all the officers had performed number of journeys from Kasaragod to Thiruvananthapuram throughout the year without any prior sanction or advance tour programme and had committed serious irregularities. Hence, the Principal Secretary to Finance in his report forwarded to the 1st respondent as per letter dated 8-6-2006 recommended appropriate action to be taken. Suspension of the petitioner and the 2nd respondent from service was the foremost recommendation made by the Principal Secretary to Finance.

10. It is not understood why the order of suspension was confined to the petitioner alone and why the 2nd respondent was spared. In the nature of the

findings and observations made by the Finance Inspection Wing, there is hardly any scope for taking action against the petitioner alone. The 2nd respondent is the superior officer and the head of the office whereas the petitioner is a subordinate ministerial employee under the supervisory control of the 2nd respondent. The report of the Finance Inspection Wing did not say that the irregularities occurred due to the actions or omissions exclusively attributable to the petitioner. On the contrary the report shows that the Finance Inspection Wing indicted the 2nd respondent as the person responsible for the irregularities in more places than one.

11. Though the fact situation is as above, the petitioner alone was placed under suspension and still remains under suspension. The above apparently illegal and unjustified attitude of respondents 1 and 3 led to the passing of interim orders by this Court in these proceedings.

12. The attitude of the respondents in not taking action against the 2nd respondent while keeping the

subordinate officer under suspension for months together is per se discriminatory and malafide too. The 1st respondent took up the contention that the authority competent to take action against the 2nd respondent is the Government. But the Government did not take any action against the 2nd respondent though direction was issued to the 1st respondent to place the petitioner under suspension.

13. It would appear that one Gopalakrishnan Potti, Joint Development Commissioner was deputed to conduct an enquiry into the allegations raised by the Finance Inspection Wing about the functioning of DRDA, Kasaragod and the said officer filed his report addressed to the 1st respondent on 25-8-2006 observing that the allegation that the orders for printing of forms and registers were given to bogus firms has been proved to be false. He also stated that the bills for payment of printing charges are not bogus. Nor the quotation by the presses bogus. He reported that the only irregularity found by him was improper maintenance or absence of certain records and non-observance of the

Stores Purchase Rules. He, therefore, recommended that the suspension of the petitioner may be reviewed compassionately, and further, that the disciplinary proceedings for imposing minor penalty on the petitioner alone was necessary. He also recommended that for the lapses committed by the 2nd respondent disciplinary proceedings for the imposition of minor penalty can be taken against him. Evidently, the 2nd respondent can safely avoid any order placing him under suspension, in the light of the subsequent enquiry made by Shri. Gopalakrishnan Potti.

14. The Principal Secretary to Government, Local Self Government Department sent letter dated 27-10-2006 to the 1st respondent requesting the said respondent to take appropriate steps on the basis of the recommendation of Shri. S. Gopalakrishnan Potti, who conducted the enquiry. A specific direction to review the suspension of the petitioner also was issued. But after receiving the above letter, on 4-11-2006, the 1st respondent has not cared to take any effective action to implement the order of the

Government.

15. The files produced for the perusal of this Court do not show anything, at least, to indicate that action has been proposed to be taken, leave alone taken, against the 2nd respondent. It is clear that even after the lapse of more than 5 months, the only person who was taken to task is the petitioner, leaving the 2nd respondent free from all troubles. Ordinarily, any prudent person would expect some action against the 2nd respondent also if not a much more serious action, taking note of the superior and controlling position he held in the office. Is disciplinary action a machinery to trap the lesser mortals while allowing the mighty and the influential to escape the clutches of law? The rationale and logic in placing the petitioner alone under suspension and continuing to keep him under suspension despite the report of Shri. S. Gopalakrishnan Potti and the direction of the Government to review the order of suspension, is ununderstandable. The 1st respondent which jumped into action as soon as direction was received from the

Government to place the petitioner under suspension has not taken any action worth mentioning pursuant to Govt. letter dated 27-10-2006 which was received in the office of the 1st respondent on 4-11-2006. This Court directed the 1st respondent to produce the files on 11-12-2006 and the same has been produced on 18-12-2006. Upto that date, there is nothing in the files to show that the 1st respondent has taken any action to review the order of suspension.

16. The respondents have not denied or controverted the averments in the writ petition. Nothing has been stated in answer to the apparently discriminatory and arbitrary action of the respondents in singling out the petitioner alone for hostile treatment. I have no hesitation to hold that the action of the respondents is patently unjust and is tantamount to abuse of the statutory and administrative power vested in them. The impugned action offends Article 14 of the Constitution of India, being ex facie arbitrary.

17. Ext. P1 is liable to be quashed for reasons

stated above. It is essential in the interest of justice to direct respondents 1 and 3 by the issuance of a writ of mandamus to reinstate the petitioner forthwith. I do so. The period during which the petitioner was kept out of service shall be regularised in accordance with law.

The writ petition is allowed as above.

K.K. DENESAN
JUDGE

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